

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 BRETT A. KINGSBURY  
Deputy Attorney General  
4 State Bar No. 243744  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1192  
6 Facsimile: (415) 703-5480  
E-mail: Brett.Kingsbury@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-131

13 **RICKY JOE LEE**  
617 Garnet Court  
14 Canton, GA 30114  
Registered Nurse License No. RN 716334

**ACCUSATION**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
20 of Consumer Affairs.

21 2. On or about November 29, 2007, the Board of Registered Nursing issued Registered  
22 Nurse License Number RN 716334 to Ricky Joe Lee (Respondent). The Registered Nurse  
23 License expired on February 28, 2009, and has not been renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Registered Nursing (Board),  
26 Department of Consumer Affairs, under the authority of the following laws. All section  
27 references are to the Business and Professions Code unless otherwise indicated.  
28

1       4.    Section 2750 of the Business and Professions Code ("Code") provides, in pertinent  
2 part, that the Board may discipline any licensee, including a licensee holding a temporary or an  
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the  
4 Nursing Practice Act.

5       5.    Section 2764 of the Code states:

6       "The lapsing or suspension of a license by operation of law or by order or decision of the  
7 board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the  
8 board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding  
9 against such license, or to render a decision suspending or revoking such license."

10       6.    Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
11 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
12 disciplinary action during the period within which the license may be renewed, restored, reissued  
13 or reinstated. Section 2811(b) of the Code provides that a license may be reinstated up to eight  
14 years after its expiration.

#### 15                   STATUTORY AND REGULATORY AUTHORITY

16       7.    Section 2761 of the Code states:

17       "The board may take disciplinary action against a certified or licensed nurse . . . for any of  
18 the following:

19       "(a) Unprofessional conduct, which includes, but is not limited to, the following:

20       "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing  
21 functions.

22       ". . . ."

23       8.    Section 2762 of the Code states:

24       "In addition to other acts constituting unprofessional conduct within the meaning of this  
25 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
26 chapter to do any of the following:

27       "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
28 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or

1 administer to another, any controlled substance as defined in Division 10 (commencing with  
2 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
3 defined in Section 4022.

4 "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
5 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
6 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
7 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
8 ability to conduct with safety to the public the practice authorized by his or her license.

9 ". . . .

10 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any  
11 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this  
12 section."

13 9. California Code of Regulations, title 16, section 1442, states:

14 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from  
15 the standard of care which, under similar circumstances, would have ordinarily been exercised by  
16 a competent registered nurse. Such an extreme departure means the repeated failure to provide  
17 nursing care as required or failure to provide care or to exercise ordinary precaution in a single  
18 situation which the nurse knew, or should have known, could have jeopardized the client's health  
19 or life."

20 10. California Code of Regulations, title 16, section 1443, states:

21 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the  
22 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and  
23 exercised by a competent registered nurse as described in Section 1443.5."

24 11. California Code of Regulations, title 16, section 1443.5 states:

25 "A registered nurse shall be considered to be competent when he/she consistently  
26 demonstrates the ability to transfer scientific knowledge from social, biological and physical  
27 sciences in applying the nursing process, as follows:  
28

1       "(1) Formulates a nursing diagnosis through observation of the client's physical condition  
2 and behavior, and through interpretation of information obtained from the client and others,  
3 including the health team.

4       "(2) Formulates a care plan, in collaboration with the client, which ensures that direct and  
5 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and  
6 for disease prevention and restorative measures.

7       "(3) Performs skills essential to the kind of nursing action to be taken, explains the health  
8 treatment to the client and family and teaches the client and family how to care for the client's  
9 health needs.

10       "(4) Delegates tasks to subordinates based on the legal scopes of practice of the  
11 subordinates and on the preparation and capability needed in the tasks to be delegated, and  
12 effectively supervises nursing care being given by subordinates.

13       "(5) Evaluates the effectiveness of the care plan through observation of the client's physical  
14 condition and behavior, signs and symptoms of illness, and reactions to treatment and through  
15 communication with the client and health team members, and modifies the plan as needed.

16       "(6) Acts as the client's advocate, as circumstances require, by initiating action to improve  
17 health care or to change decisions or activities which are against the interests or wishes of the  
18 client, and by giving the client the opportunity to make informed decisions about health care  
19 before it is provided."

#### 20                               DRUGS

21       12. "Demerol" is a compound containing Meperidine, and is a Schedule II controlled  
22 substance pursuant to Health & Safety Code section 11055, subdivision (c)(17), and a dangerous  
23 drug within the meaning of Code section 4022.

24       13. "Vicodin" is a compound consisting of acetaminophen and hydrocodone, and is a  
25 Schedule II controlled substance pursuant to Health & Safety Code section 11055, subdivision  
26 (b)(1)(J), and a dangerous drug within the meaning of Code section 4022.

1 14. "Morphine" is a Schedule II controlled substance pursuant to Health & Safety Code  
2 section 11055, subdivision (b)(1)(M), and a dangerous drug within the meaning of Code section  
3 4022.

4 15. "Valium" is a compound containing diazepam, and is a Schedule IV controlled  
5 substance pursuant to Health & Safety Code section 11057, subdivision (d)(9), and a dangerous  
6 drug within the meaning of Code section 4022.

#### 7 COST RECOVERY

8 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licentiate found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case.

#### 12 FIRST CAUSE FOR DISCIPLINE

13 (Obtaining, Possessing, and Self-Administering Controlled Substances in Violation of Law)

14 17. Respondent is subject to disciplinary action under section 2762(a) of the Code in that  
15 he obtained, possessed, and administered to himself, without authorization, controlled substances  
16 and dangerous drugs. The circumstances are as follows:

17 18. In or around late November of 2007, the Respondent was assigned a traveler position  
18 as an emergency room nurse at Salinas Valley Memorial Healthcare Systems hospital in Salinas,  
19 California.

20 19. On December 1, 2007, Respondent entered an order without doctor authorization for  
21 two hydrocodone (Vicodin) tablets in a 15-year old patient's ("Patient 2")<sup>1</sup> chart. Respondent  
22 obtained the drugs from the hospital's computerized medication storage unit ("PYXIS"), but did  
23 not provide them to Patient 2.

24 20. Later, Respondent approached the charge (assigning) nurse to ask if any patients  
25 other than those in his assigned rooms required administration of any medication. Respondent  
26 volunteered to medicate a patient suffering from chronic back pain ("Patient 1") and, after

27 <sup>1</sup> Patients' names are omitted to protect their privacy; their full names will be provided  
28 upon request during discovery.

1 receiving permission, obtained the necessary drugs from PYXIS — hydrocodone (Vicodin),  
2 diazepam (Valium), and meperidine (Demerol). Respondent did not administer all of the drugs,  
3 however, to Patient 1, who continued to complain loudly and angrily that her pain had not yet  
4 been relieved.

5 21. Respondent then left work during his shift. Respondent could not be located for  
6 nearly two hours. Despite having been assigned three rooms with multiple patient beds,  
7 Respondent did not report he was leaving or transfer care of his patients before doing so.

8 22. Respondent later phoned. Respondent indicated he had gone home for dinner and  
9 admitted the inanity of that decision.

10 23. Hospital staff questioned Respondent about drugs upon his return, and Respondent  
11 consented to a drug test. The test results were positive for four different controlled substances:  
12 hydrocodone (Vicodin), hydromorphone (Demerol), diazepam (Valium), and morphine.

13 24. Respondent had obtained the same four drugs from PYXIS that day, purportedly for  
14 different patients.

### 15 SECOND CAUSE FOR DISCIPLINE

16 (Dangerous Use of Controlled Substance)

17 25. Respondent is subject to disciplinary action under section 2762(b) of the Code in that  
18 he used a controlled substance or dangerous drug to an extent or in a manner dangerous to  
19 himself, to others, or to the public. Respondent has also used controlled substances and  
20 dangerous drugs to an extent that it impairs his ability to safely continue the practice of nursing.  
21 The circumstances are described above in the First Cause For Discipline and below in the  
22 Additional Disciplinary Consideration.

### 23 THIRD CAUSE FOR DISCIPLINE

24 (Incompetence and Gross Negligence)

25 26. Respondent is subject to disciplinary action under section 2761(a)(1) in that he was  
26 grossly negligent and failed to exercise the degree of learning, skill, care and experience  
27 ordinarily possessed and exercised by a competent registered nurse. The circumstances  
28 supporting this cause for discipline are described above in the First Cause for Discipline.

1 Additionally, the Respondent falsified and/or failed to properly document or otherwise account  
2 for the ordering and administration of the diverted drugs.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Improper Record Entries Related to Controlled Substances)

5 27. Respondent is subject to disciplinary action under section 2762(e) of the Code in that  
6 he falsified or made grossly incorrect, inconsistent, or unintelligible entries in a hospital, patient,  
7 or other record pertaining to a controlled substance or dangerous drug. The circumstances  
8 supporting this cause for discipline are described above in the First and Third Causes For  
9 Discipline.

10 **ADDITIONAL DISCIPLINARY CONSIDERATION**

11 28. To assist in determining the degree of discipline, if any, to be imposed on  
12 Respondent, Complainant alleges that on or about May 27, 1994, in a Consent Order issued by  
13 the Alabama Board of Nursing, Respondent's license was placed on probation for 24 months for  
14 taking, without authorization, a prescription for Vicodin that belonged to a patient. That decision  
15 is now final and is incorporated by reference herein as if fully set forth.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
18 and that following the hearing, the Board of Registered Nursing issue a decision:

19 1. Revoking or suspending Registered Nurse License Number RN 716334, issued to  
20 Ricky Joe Lee;

21 2. Ordering Ricky Joe Lee to pay the Board of Registered Nursing the reasonable costs  
22 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
23 section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 8/17/10

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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